IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

CRL.A.No. 1073 of 2002()

CC.127/1999 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY

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APPELLANT: COMPLAINANT

JOSE K.CHACKO, MANIYANKUDY PUTHENPURAYIL HOUSE, VEETTOOR KARA, NELLAD P.O.

BY ADV. SRI.T.A.UNNIKRISHNAN

RESPONDENTS: ACCUSED & STATE

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1. K.P.ABOOBACKER, S/O. PAREETHU, KALLEPPURAM HOUSE, CHANGAMPUZHA NAGAR P.O., SOUTH KALAMASSERY.

2. THE STATE OF KERALA, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.MOHAMMED RAFIQ
PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 1073 of 2002

Dated this the 12th March, 2007.

J U D G M E N T

The complainant in C.C.No.127/1999, on the file of the Judicial First Class Magistrate Court, Kolenchery, is the appellant. After considering the evidence, which consists of one witness and six documents for the complainant, four witnesses and six documents for the first respondent, accused, the learned Magistrate found the first respondent not guilty, and, therefore, acquitted him. Hence, the complainant is before this Court challenging the said acquittal, after obtaining leave.

2. On receipt of the notice, the first respondent was represented by Advocate Sri.Mohammed Rafiq. However, when the appeal came up for final hearing, the learned counsel submitted that the first respondent, accused, is no more.

3. I have, therefore, directed the learned Public Prosecutor, Sri. Puzhakkara Muhammed, to verify from the concerned police station, whether the first respondent, accused, died, as reported by the counsel.

4. Today, when the matter came up for consideration, the learned counsel appearing for the first respondent has produced a death certificate, issued by the Health Supervisor, Corporation of Cochin, which certify that K.P.Aboobacker, S/o. Pareed.K.A., Kalleppuram House, Changampuzha Nagar P.O., Cochin - 33, had died on 27.8.2006, in the Medical Trust Hospital, Ernakulam. I have verified the address of the first respondent with that of the address in the appeal memorandum. It tallies. Under Section 394(1) Cr.P.C., every appeal under Section 377 or under Section 378 shall finally abate on the death of the accused. The present appeal had been filed under Section 378 Cr.P.C.

In such circumstances, as the first respondent, accused, died, this appeal abates. Hence, the appeal is dismissed as abatted.

J.M. JAMES,
JUDGE

nj.

J.M. JAMES, J.

Criminal Appeal No. 1073 of 2002

J U D G M E N T

Dated: 12th March, 2007.